

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
3 ASSOCIATED RECOVERY, LLC,) Case 1:15-cv-01723
4 Plaintiff,)
5 v.) Alexandria, Virginia
6 JOHN DOES 1-44, et al.,) April 15, 2016
7 Defendants.) 10:36 a.m.
8) Pages 1 - 12

9 TRANSCRIPT OF DEFENDANTS' MOTIONS TO DISMISS
10 BEFORE THE HONORABLE ANTHONY J. TRENGA
11 UNITED STATES DISTRICT COURT JUDGE

12 APPEARANCES:

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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 THE CLERK: Civil Action 1:15-cv-1723,
2 *Associated Recovery, LLC v. John Does 1-44, et al.*

3 Will counsel please identify themselves for
4 the record.

5 MS. STEMPIEN COYLE: Good morning, Your
6 Honor. Rebecca Stempien Coyle from Levy & Grandinetti.
7 With me is Brandi Brenner on behalf of the plaintiff,
8 Associated Recovery.

9 MS. BRZEZYNSKI: Good morning, Your Honor.
10 Lora Brzezynski of Dentons on behalf of certain
11 defendants.

12 THE COURT: All right. We're here on
13 defendants' motion to dismiss or, in the alternative,
14 to transfer to the Northern District of Texas. I've
15 reviewed the pleadings in this case. I'd be pleased to
16 hear anything further from counsel that you think is
17 necessary for the Court to consider.

18 MS. BRZEZYNSKI: Thank you, Your Honor.

19 I'd just like to make a few points for Your
20 Honor. In particular, I'd like to point out one
21 argument by the plaintiff that, I think, goes to the
22 very heart of this matter.

23 THE COURT: Before you do that, would you
24 confirm for me how many of the John Does certain
25 defendants constitute. Your clients which you refer to

1 as the certain defendants --

2 MS. BRZEZYNSKI: Yes.

3 THE COURT: -- how many of the domain names
4 are included within the certain defendants that you
5 represent? Is it less than all of them?

6 MS. BRZEZYNSKI: It is, yes, less than all of
7 them. There were a group of defendants for which we do
8 not represent for which plaintiff obtained default
9 judgment against. We only represent a subset of the
10 full defendants named in the caption. Does that answer
11 your question, Your Honor?

12 THE COURT: It does. How many of your
13 clients are in the Eastern District of Texas
14 proceeding, the *Butcher* case?

15 MS. BRZEZYNSKI: Eight.

16 THE COURT: So 8 out of 14? How many?

17 MS. BRZEZYNSKI: Twenty-six, Your Honor. I
18 apologize for not knowing that number off the top of my
19 head.

20 THE COURT: All right.

21 MS. BRZEZYNSKI: Eight are also in the
22 *Butcher* case in the Eastern District of Texas.

23 THE COURT: All right. As I understand your
24 position, your clients stipulate and agree that any
25 relief with respect to these domain names can be

1 entered against them by the Northern District of Texas.

2 MS. BRZEZYNSKI: That is correct, Your Honor.

3 THE COURT: All right. Please, anything else
4 you would like to say.

5 MS. BRZEZYNSKI: You know, with that, I think
6 I'll sit down.

7 THE COURT: Okay.

8 MS. BRZEZYNSKI: Thank you.

9 THE COURT: All right. Counsel.

10 MS. STEMPIEN COYLE: Good morning, Your
11 Honor. Just to --

12 THE COURT: Just the sheer posture of this
13 case, I'm sure you appreciate, makes it difficult for
14 the Court to understand why it's here.

15 MS. STEMPIEN COYLE: Yes. I understand, Your
16 Honor.

17 I want to just clear up one -- to the fact
18 that it's relevant, I believe it's 14 of the domain
19 names are defaulted. Counsel represents 26. There are
20 two that default hasn't been entered yet because we
21 weren't sure if they were going to be represented or
22 not. I just want to make the Court aware of that, and
23 that will be forthcoming.

24 The stipulation to jurisdiction in the
25 Northern District of Texas is something that is a new

1 factual matter.

2 THE COURT: Default judgment has been entered
3 against --

4 MS. STEMPIEN COYLE: I believe Judge Anderson
5 issued his report and recommendation for the default
6 judgment against, I believe, 14 of them. We are
7 waiting for the time period for them to protest to tidy
8 up. I think it will come sometime this coming week
9 before we bring it before Your Honor to tie up.

10 THE COURT: All right. So if this Court were
11 to transfer the case, what would you propose as to
12 those defaulting defendants?

13 MS. STEMPIEN COYLE: For the defaulted
14 defendants, Your Honor, we would propose that they stay
15 here because they are *in rem*. The whole reason for any
16 sort of transfer to the Northern District of Texas
17 would be the *in personam* jurisdiction. Without *in*
18 *personam* jurisdiction, the ACPA requires that the
19 *in rem* stay where the domain registry resides, which is
20 here in Virginia. Since we have no indication that the
21 defaulted parties have any personal jurisdiction in
22 Texas, the location for the default must remain here.

23 THE COURT: Do you know the identities of the
24 owners of those domain names?

25 MS. STEMPIEN COYLE: Not with certainty, Your

1 Honor. A lot of them, the information provided is
2 questionable. Addresses are incomplete or almost
3 clearly inaccurate and misleading. For the most parts,
4 they have been completely silent in response.

5 We also did not know the identities of --
6 other than from the WhoIs records, we did not know the
7 identities of these certain defendants prior to the
8 filing.

9 THE COURT: How were they served?

10 MS. STEMPIEN COYLE: We've been sending
11 e-mail to the e-mail address listed in the WhoIs, as
12 well as postal mail to that same address. We also did
13 a service by publication pursuant to the court order.

14 THE COURT: All right. Thank you.

15 Anything else?

16 MS. STEMPIEN COYLE: The only other thing the
17 plaintiff would bring up is that should these certain
18 defendants be transferred to Texas, we would just like
19 to be clear that each of the individual certain
20 defendants does understand and does stipulate to the
21 personal jurisdiction and the jurisdiction of the Texas
22 court to enter the relief.

23 I understand it's a very overwhelming and
24 maybe jumbled situation, it seems, for defendants'
25 counsel based on the papers we've seen from them to

1 date and the conversations we've had with them. I
2 understand they are all primarily in China, if not all
3 in China. It seems that there is one -- I think he's a
4 defendant who is organizing or kind of acting as a
5 point person for the remaining of the defendants. We
6 would just like to be clear that it is not just that
7 point person who is stipulating on behalf of all of the
8 defendants, but that each individual defendant is
9 stipulating to the jurisdiction of Texas.

10 THE COURT: That's what I understand.

11 MS. STEMPIEN COYLE: Thank you, Your Honor.

12 THE COURT: All right. Anything further?

13 MS. BRZEZYNSKI: Yes, Your Honor. I think
14 it's worthwhile to clarify two points. First, as to
15 Xiaofeng Lin, who is the owner of five of the domain
16 names, he is actually on the face of one of the domain
17 name transfer agreements. He has consented to the
18 personal jurisdiction of Texas; thus, there's no *in rem*
19 jurisdiction over him here because there's *in personam*
20 jurisdiction in Texas.

21 THE COURT: All right.

22 MS. BRZEZYNSKI: So the case against him
23 cannot stand.

24 As for the remaining domain names that I
25 represent, Your Honor, eight already in the *Butcher*

1 case and then the other remaining ones, my clients have
2 stipulated that we will not challenge the jurisdiction
3 of the Northern District of Texas to order the domain
4 registrar in Virginia to transfer the domain names if
5 we do not prevail in Texas.

6 THE COURT: On the merits.

7 MS. BRZEZYNSKI: On the merits, yes.

8 THE COURT: Right.

9 MS. BRZEZYNSKI: I must tell you, Your Honor:
10 That is a very, very big issue in the case and one
11 where -- the very beginning of my argument I was saying
12 there's one argument that goes to the heart of
13 plaintiff's case, and that's the assumption that the
14 domain name transfer agreements are invalid and that
15 the receivers on behalf of Novo Point had no right to
16 transfer those agreements. That is very, very much an
17 issue which the Northern District of Texas has retained
18 exclusive jurisdiction over.

19 In fact, if those domain name transfer
20 agreements were pursuant to the Northern District of
21 Texas and there's an order that says so and are, in
22 fact, valid, then Novo Point had nothing to transfer,
23 no asset to transfer to Associated Recovery at all,
24 Your Honor.

25 THE COURT: I understand.

1 MS. BRZEZYNSKI: You know, it also begs the
2 question: Who is Associated Recovery? Is it really
3 Jeff Baron pulling the strings, which we have reason to
4 believe, hiding behind the jurisdiction of the ACPA to
5 try to avoid at all cost the Northern District of Texas
6 where he has been, essentially, called a vexatious
7 litigant repeatedly by that court?

8 THE COURT: All right.

9 MS. BRZEZYNSKI: Thank you, Your Honor.

10 THE COURT: Thank you.

11 This case is before the Court on defendants'
12 motion to dismiss or, in the alternative, to transfer
13 venue to the Northern District of Texas. The Court has
14 reviewed the briefing and the other information
15 available to it. It concludes that the case should be
16 transferred to the Northern District of Texas.

17 In that district, there has been years of
18 related proceedings that have occurred, as well as the
19 entry of an order directing that issues raised in this
20 case be filed in that court. Those proceedings have
21 included both a court ordered and supervised
22 receivership under which the domain names that are the
23 subject of this litigation were sold by a receiver
24 appointed in that district and also the unwinding and
25 winding down of that receivership as directed by the

1 Fifth Circuit.

2 Those proceedings, as I've indicated, have
3 included a certain order dated March 2015 related to
4 that winding down of the receivership that explicitly
5 stated that the Northern District of Texas retains
6 exclusive jurisdiction over, among other things, any
7 controversy that arises from or relates to the
8 receivership or actions of the receivership or his
9 professionals.

10 This action is squarely within the scope of
11 that order, which was entered against a party through
12 whom the plaintiff claims its rights; the domain names
13 that were sold in that receivership; and to the extent
14 that the plaintiff challenges the propriety of that
15 order, it should pursue that objection in the Northern
16 District of Texas or the Fifth Circuit.

17 Moreover, there were forum selection clauses
18 appearing in certain assignments entered into by
19 another entity through which plaintiff claims its
20 rights pertaining to some of the domain names at issue
21 here, which specifically designates the Northern
22 District of Texas or Texas state court to hear those
23 disputes.

24 There also appears to be another overlapping
25 lawsuit that the plaintiff has initiated in Texas,

1 albeit in the Eastern District of Texas, involving many
2 of the same domain names as those at issue here.

3 The Court has also considered the plaintiff's
4 arguments that this case should remain in this district
5 by virtue of its *in rem* jurisdiction over the domain
6 names. Without getting into whether plaintiff's
7 claims, in fact, appropriately arise under the
8 anticybersquatting statute, it appears in any event
9 that there's no reason to think that personal
10 jurisdiction cannot be obtained over these certain
11 defendants who claim these domain names as evidenced by
12 both plaintiff's claims in the Eastern District of
13 Texas against certain of these certain defendants and
14 also the certain defendants' stipulation that they
15 consent to the jurisdiction of the Northern District of
16 Texas for the purposes of providing any remedy with
17 respect to the transfer of these domain names.

18 In that regard, the anticybersquatting act
19 specifically contemplates that such claims will be
20 asserted where there is personal jurisdiction as the
21 preferred course reserving *in rem* jurisdiction for
22 those cases where personal jurisdiction is not
23 obtainable.

24 For these same reasons, the Court concludes
25 that transfer under 28 U.S.C. 1404(a) is appropriate.

1 Based on the record before the Court, the Court
2 concludes that the action could have been filed in the
3 Northern District of Texas. The convenience of the
4 parties and witnesses are facilitated in Texas, and the
5 interest of justice is served by transfer to Texas.

6 Accordingly, the Court will grant the motion
7 and transfer this case as to the certain defendants to
8 the Northern District of Texas.

9 I must say: I hadn't focused on the fact
10 that some of these defendants had already defaulted in
11 this district. I'm not going to transfer at this time
12 this case as to those defaulting defendants, but the
13 transfer order will be limited to the claims against
14 the certain defendants in this case.

15 MS. BRZEZYNSKI: Thank you, Your Honor.

16 THE COURT: The Court will enter an order.
17 Anything further?

18 MS. STEMPIEN COYLE: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Counsel is excused.

21 The Court will stand in recess.

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Time: 10:49 a.m.

23 I certify that the foregoing is a true and
24 accurate transcription of my stenographic notes.

25 /s/
Rhonda F. Montgomery, CCR, RPR